

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE:

RUSSELL ROTHE
793 CR 1350
QUITMAN, TX 75783
xxx-xx-1633

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* Case No. 23-60493
* Chapter 13
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Debtor

MOTION TO DISMISS WITH PREJUDICE FOR 120 DAYS
AND SETTING HEARING

The Trustee further requests this Court to set this Motion for hearing on the 7th day of March 2024, at 10:00 am UNITED STATES BANKRUPTCY COURT PLAZA TOWER, 110 N. COLLEGE AVENUE NINTH FLOOR, TYLER, TX

To the Honorable Judge of Said Court:

COMES NOW LLOYD KRAUS, Trustee herein, and files this his Motion to Dismiss with Prejudice for 120 Days and Setting Hearing in the above numbered and styled proceeding, and for cause would show this Honorable Court as follows:

1. **Jurisdiction:** The Court has jurisdiction over this proceeding in accordance with 28 U.S.C. §§ 157 and 1334. This is a core proceeding according to 28 U.S.C. § 157(b).
2. **Dismiss Case for Failure to Make Plan Payments:** The Trustee requests this case be dismissed pursuant to the provisions of 11 U.S.C. §§ 1307(c)(1) and (c)(4) based upon the failure of the Debtor to make plan payments and the Trustee asserts that such dismissal would be in the best interests of the Creditors.
3. **Amount of arrearage in Plan Payments:** The Debtor is in arrears in the amount of \$2,460.00 as of 2/8/2024 plus any additional plan payments that come due between that date and the hearing date noted above.
4. **Bringing Plan Payments Current Prior to the Hearing:** To prevent the dismissal of this case, the Debtor may bring the plan payments current by making payments by one of the acceptable options as set forth on the Trustee's website in sufficient time for the payment to post prior to the Court hearing.¹

¹ See the various payment options at the Trustee's website at <http://ch13tyler.com> under the tab on the left of the screen entitled "Debtors".

5. **Artificially Bringing Plan Payments Current through an Amended Plan:** The Trustee would assert that an amended Chapter 13 Plan filed by the Debtor that artificially brings the Debtor current on plan payments without requiring the Debtor to make any actual plan payments, absent good cause to file such, is filed in bad faith in violation of the provisions of 11 U.S.C. § 1325(a)(3) and would not constitute a defense to the dismissal of this case as requested under this Motion to Dismiss.

6. **Dismissal With Prejudice to Prevent the Debtor's Re-filing a Second Case for 120 Days:** The Trustee requests that this case be dismissed with prejudice to prevent the Debtor from filing for relief under any Chapter under Title 11 of the United States Code for a period of 120 days. In support of same, the Trustee asserts that the Debtor's actions as described herein constitute "cause" under 11 U.S.C. § 349(a).

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that this case be dismissed with prejudice thereby prohibiting the Debtor from re-filing for any relief under Title 11 of the United States Code for a period of 120 days; that any funds remaining on deposit with the Trustee shall be distributed, to the extent of funds available, first to the payment of any accrued adequate protection payments as set forth in the Debtor's most recent filed Chapter 13 Plan to the secured creditors as set forth therein, second to the payment of all approved administrative expenses, and, finally, the balance, if any, to the Debtor; and that the Trustee be given such other relief that the Trustee may show himself entitled.

Respectfully submitted,

Lloyd Kraus
CHAPTER 13 TRUSTEE

/s/ Lloyd Kraus
Lloyd Kraus, Chapter 13 Trustee SBN 24066773
Tagnia F. Clark, Staff Attorney SBN 24007194
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Tyler, TX 75702
(903) 593-7777; FAX (903) 597-1313

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to Dismiss and Setting Hearing has been served upon the following parties in interest by mailing a copy of same to them via first class mail or electronically on 2/8/2024:

WILLIAM H LIVELY, JR. WHL, PLLC
432 S. BONNER AVE.
TYLER, TX 75702

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/s/ Lloyd Kraus
Lloyd Kraus